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December 17, 2015

Molly Dwyer
Clerk of the Court
United States Court of Appeals for the Ninth Circuit
95 7th Street
San Francisco, CA 94103

RE: Teixeira v. County of Alameda, et al.
United States Court of Appeals for the Ninth Circuit, Case No. 13-17132

Dear Ms. Dwyer:

Defendants submit this response to Plaintiffs' Rule 28(j) letter.

In their letter, Plaintiffs cite *Mance v. Holder*, 74 F.Supp.3d 795 (N.D. Tex. 2015) as authority supporting their position that the Second Amendment protects the commercial sale of firearms.

Mance concerned a constitutional challenge to a federal law prohibiting gun dealers from transferring firearms to individuals who do not reside in the same state as the dealer's place of business. *Mance*, 74 F.Supp.3d at 799. In a footnote in the portion of the opinion addressing the government's justification for this law, the district court stated that operating a gun store is conduct that is "generally protected by the Second Amendment." See *id.* at 807 n.8.

This statement lacks persuasive value for three reasons. First, it had no bearing on the Court's disposition of the case, and thus may be disregarded as dicta. See *Ark. Game & Fish Comm'n v. United States*, 133 S.Ct. 511, 520 (2012) (internal quotations omitted) (general expressions that go beyond the case "ought not to control the judgment in a subsequent suit when the very point is presented for decision.") Second, it is contrary to several appellate decisions finding *Heller's* list of "presumptively lawful" measures—which includes laws restricting the sale of firearms—as regulating conduct outside the scope of the Second Amendment. See *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & n.26 (2008); see also e.g., *Jackson v. City & Cnty. of S.F.*, 746 F.3d 953, 960 (9th Cir. 2014); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 196 (5th Cir. 2012); *United States v. Vongxay*, 594 F.3d 1111, 1115 (9th Cir. 2010). And third, it is in conflict with the decisions other courts holding the opposite. See *United States v. Chafin*, 423 Fed.App'x 342, 344 (4th Cir. 2011); *Mont. Shooting Sports Ass'n v. Holder*, No. CV-09-147-DWM-JCL, 2010 WL 3926029, at *21 (D. Mont. Aug. 31, 2010).

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For these reasons, this Court should disregard *Mance's* dicta regarding the scope of the Second Amendment.

Very truly yours,

DONNA R. ZIEGLER
County Counsel



By
SCOTT J. FEUDALE
Deputy County Counsel

cc: Donald Kilmer, Counsel for Plaintiff-Appellants John Teixeira, et al.